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STATE FOR AF/FO, AF/RSA

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TAGS: [PHUM](#) [PGOV](#) [BC](#)

SUBJECT: HUMAN RIGHTS TRENDS PERTAINING TO SEXUAL ORIENTATION AND
GENDER IDENTITY

REF: STATE 130765

¶1. While most people in Botswana appear to believe homosexuality is illegal, there is nothing in the penal code to that specifically criminalizes homosexuality. The perception may stem from provisions of the penal code that penalize "unnatural acts," and the widespread belief that this is targeted at homosexuals. In particular the penal code of Botswana, Chapter 8:01, Section 164 states:

Any person who -

- (a) has carnal knowledge of any person against the order of nature;
 - (b) has carnal knowledge of an animal; or
 - (c) permits a male person to have carnal knowledge of him or her against the order of nature,
- is guilty of an offence and is liable to imprisonment for a term not exceeding seven years.

¶2. This section was amended in 1998 to substitute "any other" for the word "male." This is the only section in the penal code that appears to be pertinent. There is no law that makes simply being homosexual a crime, although it would be fair to say that the average person thinks that this is contained in the law. There is no indication that the penal code will be amended to include homosexuality as a specific offense.

¶3. There is currently a group who is trying to register as a NGO to advocate for the rights of gay, lesbian and bisexual people in Botswana. According to the group, the GOB will not register them. The reason cited, as post understands, is that the GOB will not register a group that will "advocate for something that is illegal." Members of the group are publically known and openly gay and there have been no reports of any retribution, harassment by the police, or violence by the GOB or private citizens.

¶4. Current and former members of the Botswana Police Service say that they do not actively seek homosexuals to arrest, and that this would only be pursued if they received specific complaints. In fact, there are only isolated reports recalling anyone being arrested or brought to trial under this statute in years past.

¶5. In general, gays in Botswana do not disclose their sexual orientation publically. Botswana is a conservative society and it is very rare to see public displays of affection, even between heterosexual couples. Therefore it is hard to say if gays are suppressed from expressing their feelings or if lack of homosexual expression fits within the cultural context of keeping displays of affection and sexuality a private matter. In general, it seems as though one could classify Botswana as a "don't ask, don't tell" society when it comes to homosexuality. The citizens of Botswana know it exists and seem to turn a blind eye as long as the issue is not forced upon them.

NOLAN